PRIMA OIL & GAS CO.
AMERAC ENERGY CORP.

IBLA 96-502, 97-415 Decided March 17, 1999

Consolidated appeals from decisions of the Utah State Office, Bureau of Land Management, on State Director Review, denying applications by an oil and gas lessee for a suspension of operations and production on leases committed to the Table Top Unit. SDR 96-5, SDR 97-06.

Vacated and remanded.

1. Oil and Gas Leases: Suspensions

Section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994), authorizes the Secretary of the Interior to suspend operations and production under oil and gas leases in the interest of conservation of natural resources when study of the environmental impacts of proposed development is required prior to issuance of necessary permits.

2. Oil and Gas Leases: Suspensions

When a lessee's inability to commence drilling prior to lease expiration cannot be directly attributed to any order, delay, or inaction by any Federal agency, the Secretary of the Interior is not required to grant a suspension, but has the authority to do so in the exercise of his informed discretion after making the necessary finding that suspension is in the interest of conservation.

3. Oil and Gas Leases: Suspensions

A BLM decision rejecting a suspension of operations and production under section 39 sought by the operator of an approved unit plan on the ground that the offset acreage adjacent to the approved unit well site remains unleased because of ongoing environmental studies will be reviewed in light of the adequacy of the record to support the exercise of discretion. Such a decision

> is properly vacated as inconsistent with the announced BLM policy that, when a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling, of other adjacent Federal lands needed for logical exploration and development which are currently not available for leasing, such leases should not expire due to the unavailability of adjacent or commingled unleased Federal lands necessary for the logical exploration and development.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellants; David K. Grayson, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Appellants Prima Oil & Gas Company and Amerac Energy Corporation have filed an appeal (docketed as IBLA 96-502) of the July 11, 1996, decision of the Deputy State Director, Utah State Office, Bureau of Land Management (BLM), on State Director Review (SDR 96-5). That decision affirmed the May 13, 1996, decision of the BLM Utah State Office Group Leader (Mineral Resources) rejecting an application to change a previously granted suspension of operations to a suspension of operations and production (SOP) for oil and gas leases committed to the Table Top Unit, Summit County, Utah. Appellant Amerac is the unit operator and appellant Prima has a contractual right to a portion of Amerac's interest in the unit. By order dated October 10, 1996, we granted appellants' petition for stay of the effect of the BLM decision pending review of this appeal on the merits.

Thereafter, an appeal (docketed as IBLA 97-415) was brought by the same appellants from a May 2, 1997, decision of the Deputy State Director, Utah State Office, BLM, on SDR. The latter decision affirmed the March 19, 1997, decision of the Chief, Branch of Fluid Minerals, Utah State Office, issued in response to a subsequent additional request for an SOP on the oil and gas leases committed to the Table Top Unit which was filed on March 6, 1997. The BLM decision rejected the SOP application based on BLM's adjudication of the status of certain leases committed to the unit and of the status of the unit itself. Specifically, BLM held (1) that certain oil and gas leases committed to the Table Top Unit had expired at the end of their term on February 3, 1997; (2) approval of the application for permit to drill (APD) for the unit well was rescinded in view of expiration of the lease involved; and (3) the unit was held to have terminated for failure to commence drilling operations timely as required by the unit agreement. The March 1997 decision also held that the unit agreement was invalid ab initio for failure to commence drilling operations within the time allowed. In an order dated July 17, 1997, we noted that the BLM adjudication of the status of the leases and the unit was premature in view of the pending appeal of the earlier decision denying an SOP. We granted a petition to stay the effect of the BLM decision pending review and consolidated these two cases for review.

In the statement of reasons (SOR) for appeal, appellants note that the Table Top Unit embraces 23,577 acres of land in the Wasatch-Cache National Forest in Summit County, Utah. It appears from the record (SOR, Ex. B) that an SOP was previously granted effective March 1, 1989, by BLM decision dated April 17, 1989. The SOP was granted for leases committed to the unit because the pending APD for the unit well could not be adjudicated until the required environmental study had been completed by U.S. Forest Service (FS) officials.

Appellants further note that more than 10 percent (2,536 acres) of the Federal acreage within the unit was unleased at the time of unit approval and remains unleased. Although the Final Environmental Impact Statement (EIS) and Record of Decision (ROD) for oil and gas leasing was issued in April 1994, appellants point out that the ROD was subsequently withdrawn by FS in August 1994 as to approximately 80,000 "roadless" acres including all of the unleased acreage in the Table Top Unit. (SOR at 2-3, Ex. D.)

Meanwhile, a separate EIS was completed for the APD for the unit well. In an ROD dated January 6, 1994 (SOR, Ex. F), FS decided to implement the proposed action (FS preferred alternative) described in the EIS and approve a surface use plan of operations submitted with the APD. Subsequently, BLM approved the APD for the unit well on July 5, 1995, subject to certain conditions including those required by FS in its ROD. (SOR, Ex. H.) Appellants were allowed to start building the road to the well pad in September 1995, thus effectively vacating the original SOP effective September 1, 1995. Due to the onset of winter weather, FS required appellants to suspend road work on November 11, 1995. Subsequently, in a letter dated January 18, 1996, BLM approved a suspension of operations (but not production) tolling the running of the terms of the leases from the date road work was suspended until conditions on site permitted work to resume and extending the lease terms by the period of the suspension. It was also held by BLM that lessees would be required to continue payment of applicable rental or minimum royalty during the period of suspension.

Thereafter, by letter dated April 24, 1996, the unit operator, Amerac, applied to BLM for an SOP for the unit leases. Amerac noted that a 400-acre tract of land within the unit located less than 1/2 mile from the proposed well site had not yet been made available for leasing due to the failure of FS to complete the EIS for oil and gas leasing in the area. Work on the road to the drilling site was commenced in the belief that the environmental analysis necessary to leasing would be completed and leases issued prior to commencement of drilling. Amerac contended in support of an SOP that it is an unacceptable practice in the oil and gas industry to drill a very risky and expensive exploratory well such as that proposed here where the well is directly offset by unleased acreage. Further, Amerac noted that many of the unit leases were about to expire at the end of their term, forcing it to either drill a well under unfavorable circumstances or lose the leases. Amerac contended that, under the BLM Manual, an SOP may be applied for "when a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling, of other adjacent federal lands needed for logical exploration and development that are not currently available for leasing," citing BLM Manual § 3103.42 (Release 3-305 (May 12, 1995)). Citing the same BLM Manual provision for the policy that "such leases should not expire due to the unavailability of adjacent or commingled unleased federal lands necessary for the logical exploration and development," Amerac asserted that BLM approval of the unit constituted its finding that the area is logically subject to exploration and development.

In its May 13, 1996, decision rejecting the SOP application, BLM held that the provision of the BLM Manual cited by Amerac was, by its terms, no longer applicable once the APD for the unit well was approved. On SDR, BLM rejected appellants' concerns regarding the risk of drilling an exploratory well adjacent to unleased acreage, noting that the lessor does not share in that risk. Further, BLM noted that the acreage at issue had been unleased since approval of the unit in 1989. With respect to the timing of the EIS for lease issuance, BLM disclaims any responsibility for delays and indicates that it made no representations regarding timing. Most significantly, the SDR decision found that once the APD for the unit well was approved by BLM the Federal Government was no longer causing a loss of benefits under the issued leases and, hence, had no obligation to grant an SOP. The SDR decision further affirmed the assertion that, under the BLM Manual policy, a suspension was no longer applicable once an APD was issued within the unit.

Appellants contend on appeal that the BLM decision denying the April 1996 application for SOP was arbitrary and capricious. They assert that problems assembling the necessary lease blocks to pursue a drilling program resulting from FS delays in issuance of an EIS for leasing unleased tracts such as those within the unit constitute the type of problem which BLM was seeking to address in promulgating Instruction Memorandum (I.M.) No. 92-331 (August 28, 1992). (SOR at 4.) Further, appellants note that the provisions of the I.M. have now been incorporated in the BLM Manual sections dealing with suspension of leases. BLM Manual § 3103.42 (Rel. 3-305 (May 12, 1995)). Appellants argue that the BLM decision dated July 11, 1996, finding that the Federal Government is not causing the loss of full benefits of the existing leases simply because the APD for the unit well has been approved, disregards the purpose of the policy. (SOR at 5.) Appellants note that the express purpose of the BLM policy is to allow an SOP in order to avoid expiration of existing leases when a lessee is unable to explore, develop, and produce those leases due to the proximity of other adjacent Federal lands needed for logical exploration that are currently unavailable for leasing. Id. at 5-6. Appellants contend that they and their predecessors have spent many years and hundreds of thousands of dollars seeking to drill this unit, but it would be "folly" to drill the well when the direct offset is unleased Federal land. (SOR at 5, Ex. G.) Appellants contend that the lessee should not be penalized for the diligence of the operator in obtaining the APD in anticipation of the availability of the offset acreage for leasing.

An answer has been filed by BLM contending that the authority to suspend oil and gas leases pursuant to section 39 of the Mineral Leasing Act of 1920, 30 U.S.C. § 209 (1994), is within the discretion of the Secretary or his authorized officer. It is asserted by BLM that a lessee has no right to a lease suspension unless the lessee has been prevented from developing the lease by the actions of the United States and, further, that this has not occurred in the present case where the APD for the unit well has issued. Further, BLM contends appellants had ample opportunity to drill on and develop the leases and the fact that they made a business decision not to invest the funds necessary to develop those leases is not a valid reason for suspension of those leases.

[1, 2] Section 39 of the Mineral Leasing Act of 1920 authorizes the Secretary of the Interior to suspend oil and gas leases in the interest of conservation of natural resources. 30 U.S.C. § 209 (1994). It has been recognized that the Department may suspend a lease in the interest of conservation where action cannot be taken on an application because of the time needed to comply with the requirements of the National Environmental Policy Act. John March, 98 IBLA 143, 147 (1987); Jones-O'Brien, Inc., 85 I.D. 89, 91 (1978); see Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981); Union Oil Co. v. Morton, 512 F.2d 743, 749 (9th Cir. 1975). This authority has been interpreted to mean that the Secretary is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. Copper Valley Machine Works, Inc. v. Andrus, supra at 603-04; John March, supra; Sierra Club (On Judicial Remand), 80 IBLA 251, 260-64 (1984), aff'd, Getty Oil Co. v. Clark, 614 F. Supp. 904, 917 (D. Wyo. 1985), aff'd, Texaco Producing, Inc. v. Hodel, 840 F.2d 776 (10th Cir. 1988). When the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, the Secretary of the Interior is under no obligation to grant a suspension, but has the authority to do so in the exercise of his informed discretion after making the necessary finding that suspension is in the interest of conservation. John March, supra; see Sierra Club (On Judicial Remand), supra at 264; Jones-O'Brien, Inc., 85 I.D. at 91.

It is in this context that BLM promulgated the Manual provision cited by appellants. The relevant portion of that provision states:

> [A] suspension of operations and production under Section 39 of the Mineral Leasing Act may be applied for when a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling, of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing. The BLM policy is that such leases should not expire due to the unavailability of adjacent or commingled unleased Federal lands necessary for the logical exploration and development. A lessee in this situation must submit a proposal

> for the designation of an area as logically subject to exploration and development that includes all acreage (leased or otherwise) needed to properly drill and explore the target formation, along with supporting geologic information, including the results of any geophysical surveys, and other pertinent available information. The lessee must concurrently apply for a Section 39 lease suspension by demonstrating that it is not logical to proceed with exploration activities on existing leases without the acquisition and participation of neighboring Federal unleased lands which are currently not available for leasing. The lessee making the application for the lease suspension shall have the burden of proving to the satisfaction of the BLM authorized officer that, in the interest of obtaining the greatest ultimate recovery of oil or gas resources, and the conservation of natural resources, the existing Federal lease or leases cannot be successfully developed without the leasing of the adjacent or commingled lands, or that such a suspension is necessary to promote resource development. Such a lease suspension shall waive the annual rental payments and toll the lease term until one year after the effective date of the newly issued Federal leases resulting from the unleased lands being offered in a competitive lease sale or until approval of an Application for Permit to Drill within the area determined to be logically subject to exploration and development, whichever comes first.

BLM Manual § 3103.42 (Rel. 3-305 (May 12, 1995)).

[3] In the present case, the action taken by FS officials has not, as a legal matter, precluded drilling of the unit well pursuant to the APD issued by BLM. In this context, the decision falls within the area of the Secretary's discretionary authority to approve an SOP under section 39 in the interest of conservation of natural resources. NevDak Oil and Exploration, Inc., 104 IBLA 133, 137 (1988); John March, 98 IBLA at 147. The guidelines for exercise of this discretion were set forth by BLM in the above-quoted provision from the BLM Manual. Thus, when an SOP under section 39 is applied for by a lessee who "is unable to explore, develop, and produce leases due to the proximity, or commingling, of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing," the "BLM policy is that such leases should not expire due to the unavailability of adjacent or commingled unleased Federal lands necessary for the logical exploration and development." BLM Manual § 3103.42 (Rel. 3-305 (May 12, 1995)). It has not been disputed by BLM that the approval by BLM of the Table Top Unit plan of development establishes the unit area (including the unleased acreage) as "logically subject to exploration and development that includes all acreage (leased or otherwise) needed to properly drill and explore the target formation." See 43 C.F.R. § 3181.2 (designation of unit area).

As a practical matter, it is clear from the record that the failure of FS officials to determine whether Federal oil and gas leases may be issued for the offset tract has made drilling of the unit well infeasible. Rejection of the SOP at a time when unit leases are subject to imminent expiration while the FS has failed to make a decision regarding leasing of the offset tract adjacent to the unit well site appears inconsistent with that policy and, hence, arbitrary and capricious. It is true that the Manual provision literally provides, as BLM noted, for termination of the SOP after approval of an APD within the logical development area or 1 year after issuance of leases for the unleased acreage, whichever comes first. This limitation has been read by BLM in this case to affirmatively preclude an SOP when a diligent operator has initiated the sometimes lengthy application and environmental review process for an APD in the belief that the required environmental analysis for oil and gas leasing of a critical offset tract would be completed by the time of APD approval. Such an interpretation is inconsistent with the stated BLM policy that leases "should not expire due to the unavailability of adjacent or commingled unleased Federal lands necessary for the logical exploration and development" and that an SOP is properly granted when "a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling, of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing." Accordingly, we vacate and remand the BLM decision of May 13, 1996, rejecting the application for an SOP. Since the BLM decision of May 2, 1997, rejecting the subsequent application for an SOP was predicated on findings made in the earlier decision, the latter decision is also vacated and remanded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are vacated and the cases are remanded.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Burski
Administrative Judge